IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No. 1745 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASANTBEN GOVINDBHAI VAIKARIYA
Versus
GOVINDBHAI THAKARSHIBHAI VAIKARIYA

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Appearance :
MR AM PAREKH for Applicant(s) : 1,
MR MRUGEN K PUROHIT for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 30/08/2006

ORAL JUDGMENT

RULE. Learned advocate Mr. Mrugen Purohit waives service of rule on behalf of the opponent. With the consent of parties, this matter is taken up for final hearing today.

By filing this application, the applicant-wife has prayed to quash and set aside the order dated 25.05.2005 passed by Principal District Judge, Rajkot in Civil Misc. Application No. 437 of 2006 whereby her application for transfer of Hindu Marriage Petition No. 5 of 2006 from the file of Principal Senior Civil Judge, Gondal to any of the Civil Court at Rajkot came to be dismissed.

The respondent-husband initiated HMP No. 5 of 2006 before the Civil Judge, Gondal for declaring the respondent's marriage with the present petitioner as null and void on various grounds as narrated in the Marriage Petition. On receiving the summons of the said proceedings, the petitioner-wife preferred an application for transfer of the aforesaid case from Gondal Court to Rajkot Court. In the application for transfer, which at Annexure 'D' page 32 onwards in the compilation of this application, she has contended that she is residing at Rajkot; she being a lady, finds it very difficult to go to Gondal, and, she apprehends that some untoward incident may happen at Gondal. It is, therefore, prayed that the Marriage Petition may be transferred from Gondal to Rajkot. Learned Principal District Judge, Rajkot has rejected the said application on the ground that the Civil Court at Rajkot has no jurisdiction to entertain and decide the Marriage Petition as neither the marriage was solemnized within the territorial jurisdiction of the Civil Court at Rajkot nor the respondent is residing within the territorial jurisdiction of the Civil Court, Rajkot, nor the parties have lastly resided together within the territorial jurisdiction of the Civil Court, Rajkot. The learned Judge observed that “the request for transfer and other difficulties narrated in the petition regarding cost etc. can be solved by presenting the petition to the respective Court under Sec. 24 as well as other provisions of law”.

Being aggrieved by the said order, the applicant-wife has approached this Court under section 24, CPC for transfer of HMP No.5 of 2006 from Gondal to Rajkot.

I have heard learned advocates appearing for the parties. I have also perused the impugned order passed by the Principal District Judge.

Both the learned advocates appearing in this matter say that the Misc. Civil Application No. 437 of 2006 before the District Judge, Rajkot was preferred under section 24, CPC though the same has not been specifically spelt out in the body of the application. In this context, I am of the view that the learned Principal District Judge has erred in rejection the transfer application on the ground that the Civil Court at Rajkot has no jurisdiction to entertain and decide the Marriage Petition.

It is not in dispute that so far as the Civil Court at Gondal is concerned, it is within Rajkot District, and, therefore, under section 24, CPC, learned District Judge, Rajkot is competent to transfer any proceedings under section 24, CPC to any other Court within Rajkot District. Thus, since Gondal is within Rajkot District, the District Judge has got jurisdiction to pass an order under section 24, CPC to transfer case from one Court to another within Rajkot District. Section 24, CPC, provides as under:

> 24. General power of transfer and withdrawal-
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> (1). On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may at any stage -
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> (a). transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or,
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> (b). withdraw any suit, appeal or other proceedings pending in any Court subordinate to it, and-
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> (i). try or dispose of the same; or
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> (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
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> (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.
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> (2). Where any suit or proceedings has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special

directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3). For the purpose of this section,-

(a). Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b). "proceedings" includes a proceedings for the execution of a decree or order.

(4). The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5). A suit or proceedings may be transferred under this section from a Court which has no jurisdiction to try it."

Under sub-clause (5), a suit or proceedings can be transferred from a Court which has no jurisdiction to try it.

So far as language of section 24 is concerned, it leave no doubt for any clarification or interpretation. In that view of the matter, even if the Court at Rajkot has no territorial jurisdiction, the Principal District Judge was competent to pass an order if the Court was otherwise of the opinion that such transfer is required to be made. The learned District Judge has unfortunately completely misread the aforesaid provision and rejected the transfer application only on the ground that the Civil Court at Rajkot has no territorial jurisdiction. Even if it was not mentioned in the body of the transfer application that it is preferred under section 24, CPC, that is the only section in the CPC which provides for transfer of cases from one Court to another. In that view of the matter, the District Court was competent to decide the application for transfer of the matter within the same District. As pointed out earlier, the Civil Court at Gondal is under the District Court, Rajkot and the learned Principal District Judge was competent to pass appropriate order by entertaining the application on merits without rejecting the same on the ground of territorial jurisdiction.

At this stage, reference is required to be made to a decision of the Supreme Court in the case of G. VIJAYALAKSHMI vs. G. RAMACHANDRA SEKHARA SASTRY reported in AIR 1981 SC 1143. While dealing with

section 25, CPC regarding power of Supreme Court to transfer of suits, the Apex Court observed as under in paragraph 4 of the judgment:

> ""4. So far s Section 21A of the Hindu Marriage Act is concerned the marginal note of that section itself makes it clear that it deals with power to transfer petitions and direct their joint or consolidated trial "in certain cases" and is not exhaustive. Further sub-section (3) of Section21A on which strong reliance was placed runs thus:
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> > 21.A(3). In a case where clause (b) of sub-section (2) applies, the Court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 0f 1908) to transfer any suit or proceedings from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code."
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> This provision in terms deals with the power of the Government or the Court on whom powers of transfer have been conferred by the C.P.C. As it then stood, that is to say, old Sections 24 and 25 of C.P.C. It does not deal with the present Section 25 C.P.C. which has been substituted by an amendment which has come into force with effect from February 1, 1977 (section11 of the Amending Act 104 of 1976). By the amendment very wide and plenary power has been conferred on this Court for the first time to transfer any suit, appeal or other proceedings from one High Court to another High Court or from one Civil Court in one State to another Civil Court in any other State throughout the country. Conferal of such wide and plenary power on this Court could not have been in the contemplation of Parliament at the time of enactment of Section 21A of the Hindu Marriage Act, 1955. It is, therefore, difficult to accept the contention that Section 21A of Hindu Marriage Act excludes the power of transfer conferred upon this Court by the present Section 25 of C.P.C. in relation to proceedings under the Act.""

The Andhra Pradesh High Court, in the case of T. REDDY vs. M. RAO reported in AIR 1970 AP 194, while dealing with a case where it was

argued that the Court at Narasarapet had no jurisdiction to try the suit held that the language of section 24 of CPC is very wide and there are no restrictions or impediments in the way of the High Court exercising the power of transfer merely because there is a dispute regarding jurisdiction. So far as the District Court is concerned, the same power of transfer within the same District is conferred on the District Court under sec. 24 of CPC as the power conferred in the High Court for transfer from a Court in one District to a Court in another District within the State.

So far as transfer within the District is concerned, the District Court enjoys the same power by which it can transfer any proceedings from one Court to another Court – even to a Court which has no territorial jurisdiction. Learned Principal Judge has completely misread the provisions of section 24 CPC by rejecting the application on the ground that the Court at Rajkot has no territorial jurisdiction on account of the various facts mentioned in the order and stated hereinabove. It is also difficult to appreciate as to why the learned District Judge has asked for presenting the petition to the respective Court under Sec. 24 as well as other provisions of law. The learned Judge has, therefore, committed an error in not treating the said application as an application under section 24, CPC. While deciding the said application, territorial jurisdiction is not of much relevance and the learned District Judge was required to consider on merits whether the proceedings was required to be transferred from one Court to another within the same District under sec. 24, CPC. It is required to be noted that the application for transfer before the District Judge was not under section 21.A of the Hindu Marriage Act. Looking to the averments in the application, it is clear that the said application was an application under sect. 24 of CPC as the applicant even narrated about her apprehension for attending the Court at Gondal. A perusal of the application makes it very clear that it was an application under section 24, CPC. The learned District Judge, therefore, should not have rejected the application on the ground of territorial jurisdiction but should have decided it on merits.

In the light of the aforesaid, this matter is required to be remanded to the learned District Judge for deciding Civil Misc. Application No.

437/2006 afresh on merits and to pass appropriate orders as deemed fit in accordance with law.

In the result, the order order dated 25.05.2005 passed by Principal District Judge,Rajkot in Civil Misc. Application No. 437 of 2006 is quashed and set aside. The matter is remanded to the District Judge to re-hear the matter and pass appropriate order in accordance with law in the light of the aforesaid observations. However, it is made clear that this Court has not expressed any opinion on the merits regarding transfer of the case and it will be open to the parties to raise all available points and it will also be open to the learned District Judge to pass appropriate orders on merits. In view of the fact that matrimonial dispute is involved, the learned District Judge shall decide the application at the earliest possible and in any event, within one month from the date of receipt of the writ of this Court.

Rule made absolute accordingly. No order as to costs.

Registry to send writ forthwith.

[P. B. MAJMUDAR, J.]

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